

### III. REMARKS

1. Claims 1-12 and 14-26 remain in the application. Claims 13 and 27 were previously cancelled without prejudice. Claims 1, 18, and 21 have been amended to more clearly recite their features.

2. Applicants respectfully submit that claims 1-12 and 15-26 are patentable over the combination of Kulberg et al. (US 5,850,612, "Kulberg") and Imura et al. (US 5,909,653, "Imura") under 35 USC 103(a).

The combination of Kulberg and Imura fails to disclose or suggest

wherein the antenna is arranged to pivot about the pivot point only at an acute angle in a single plane between a first position defined by the first stop pin in which the antenna projects from a top surface of the telephone, and a second position defined by the second stop pin in which the antenna projects from the top surface of the telephone, the antenna being biased and configured to be locked as the antenna pivots,

wherein the single plane is substantially perpendicular to a front surface of the radio telephone,

as substantially recited by claims 1, 18, and 21.

In the present claims an antenna pivots only at an acute angle in a single plane. The single plane is substantially perpendicular to a front surface of the radio telephone. The antenna only pivots between two positions in the single plane and in both positions projects from the top surface of the telephone.

Applicants note that according to MPEP 2143.01 V. and VI., any proposed modification cannot render the prior art unsatisfactory for its intended purpose and cannot change the principle of operation of a reference. Thus, the functionality of both Kulberg and Imura must be preserved when combining them.

Combining Kulberg and Imura cannot result in removing any of the features of Kulberg, in particular where Kulberg's antenna pivots through more than an acute angle as shown in

Figures 3 and 19. As a result, the combination of Kulberg and Imura does not pivot "only at an acute angle in a single plane" as recited by the present claims.

Combining Kulberg and Imura also cannot result in removing the features of Kulberg where Kulberg's antenna does not project from a top surface of the telephone, as shown in Figures 7, 8, 13. As a result, the combination of Kulberg and Imura does not have an antenna that only pivots "between a first position defined by the first stop pin in which the antenna projects from a top surface of the telephone, and a second position defined by the second stop pin in which the antenna projects from the top surface of the telephone" as recited by the present claims.

Therefore, the combination of Kulberg and Imura fails to render independent claims 1, 18, and 21, and dependent claims 2-12, 15-17, and 19 26 unpatentable.

3. Claims 2 and 23 are patentable because of their dependencies and also because of the subject matter they include.

Claim 2 recites: "a switch actuated by pivoting the antenna for controlling operation of the radio telephone," while claim 23 recites: "a switch for controlling operation of the radio telephone and an actuator on the antenna for actuating the switch."

The present action states that "the modified Kulberg et al. disclose a switch actuated by pivoting the antenna is position for controlling operation of the radio telephone (Kulberg et al., col. 4 lines 17-20).

Column 4, lines 17-20 of Kulberg states:

Alternatively, coil or leaf type springs can be mounted between the plate and the handset to bias one side of the plate away from the handset. A latch mechanism secures the plate in a starting or non-offset position when the antenna is not in use, and releases the plate to be moved by the spring force when the antenna is to be used.

There is no disclosure in this portion of Kulberg or anywhere in the combination of Kulberg and Imura related to the features of claims 2 and 23. Therefore, the combination of Kulberg and Imura fails to render claims 2 and 23 unpatentable.

4. Claims 3 and 19 are patentable because of their dependencies and also because of the subject matter they include.

Claim 3 recites: "the antenna is biased towards the first position," and claim 19 recites: "the antenna in the first position is stable and wherein the antenna is biased towards the first stable position."

The present action states: "the modified Kulberg et al. disclose the antenna is biased towards the first position (Kulberg et al. fig. 12-13)." However, Figure 12 shows a recess 144 for stowing the antenna and Figure 13 illustrates support plate 154 that provides a multi-axis gimbal type support.

There is no disclosure in Figures 12 and 13 of Kulberg or anywhere in the combination of Kulberg and Imura related to the features of claims 3 and 19. Therefore, the combination of Kulberg and Imura fails to render claims 3 and 19 unpatentable.

5. Claim 5 is patentable because of its dependency and also because of the subject matter it includes.

Claim 5 recites: "a switch for controlling operation of the radio telephone and an actuator on the antenna for actuating the switch."

The present action states that "the modified Kulberg et al. disclose a switch for controlling operation of the radio telephone and an actuator on the antenna position for actuating the switch (Kulberg et al., col. 4 lines 17-20).

Column 4, lines 17-20 of Kulberg is quoted above and has no disclosure related to the features of claim 5. The combination of Kulberg and Imura is also silent with respect to these features. Therefore, the combination of Kulberg and Imura fails to render claim 5 unpatentable.

6. Claim 6 is patentable because of its dependency and because of the subject matter it includes.

Claim 6 recites: "the antenna is biased towards the second position."

The present action states: "the modified Kulberg et al. disclose the antenna is biased towards the second position (Kulberg et al. fig. 12-13)." However, as argued above, Figure 12 shows a recess 144 for stowing the antenna and Figure 13 illustrates support plate 154 that provides a multi-axis gimbal type support.

There is no disclosure in Figures 12 and 13 of Kulberg or anywhere in the combination of Kulberg and Imura related to the features of claim 6. Therefore, the combination of Kulberg and Imura fails to render claim 6 unpatentable.

7. Claim 14 is patentable because of its dependency and also because of the subject matter it includes.

Claim 14 recites: "the antenna is a non-retracting helical antenna."

The present action states that "the modified Kulberg et al. disclose the antenna is a non-retracting helical antenna (Kulberg et al., col. 11 lines 10-11).

Column 11, lines 10-11 of Kulberg states:

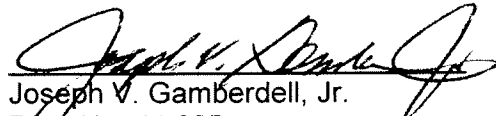
As stated above, antenna 124 is any one of a number of antennas found useful for satellite communication systems, such as, an octafilar helix antenna.

This portion of Kulberg is silent with respect to a non-retracting antenna as is the combination of Kulberg and Imura. Therefore, the combination of Kulberg and Imura fails to render claim 5 unpatentable.

For all of the foregoing reasons, it is respectfully submitted that all of the claims now present in the application are clearly novel and patentable over the prior art of record, and are in proper form for allowance. Accordingly, favorable reconsideration and allowance is respectfully requested. Should any unresolved issues remain, the Examiner is invited to call Applicants' attorney at the telephone number indicated below.

The Commissioner is hereby authorized to charge payment for any fees associated with this communication or credit any over payment to Deposit Account No. 161350.

Respectfully submitted,

  
Joseph V. Gamberdell, Jr.  
Reg. No. 44,695

22 October 2009  
Date

Perman & Green, LLP  
425 Post Road  
Fairfield, CT 06824  
(203) 259-1800  
Customer No.: 2512